

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1455 Misrepresentation of Military Status
SPONSOR(S): Public Safety & Domestic Security Policy Committee, Sachs and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1824

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	10 Y, 0 N, As CS	Billmeier	Cunningham
2)	Criminal & Civil Justice Policy Council		Billmeier	Havlicak
3)				
4)				
5)				

SUMMARY ANALYSIS

CS/HB 1455 creates a new third degree felony to prohibit a person from misrepresenting himself or herself as a member or veteran of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, or National Guard and wear the uniform of or any medal or insignia authorized for use by members or veterans of those entities while soliciting for charitable contributions.

The bill amends Florida's "Solicitations of Contributions Act" to prohibit a person from falsely stating that he or she is a member of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, or National Guard in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion.

On March 17, 2010, the Criminal Justice Impact Conference determined that an earlier version of this bill, which created a third degree felony relating to falsely claiming to be a member or veteran of the United States Armed Forces or organized militia for commercial purposes, would have an insignificant prison bed impact on the Department of Corrections. The Criminal Justice Impact Conference has not considered the committee substitute. However, since the committee substitute limits the scope of the original bill, it is anticipated that the committee substitute will have an insignificant prison bed impact.

The bill provides an effective date of October 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Florida's "Solicitations of Contributions Act"¹ is intended to recognize the right of persons or organizations to conduct solicitation activities. The Act provides that it is "the intent of the Legislature to protect the public by requiring full public disclosure of the identity of persons who solicit contributions from the public, and of the purposes for which such contributions are solicited and the manner in which the contributions are actually used. It is further the intent of the Legislature to prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions."²

Section 496.415, F.S., provides that it is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion³ to falsely state that the person is a member of or a representative of a charitable organization or sponsor, or falsely state or represent that the person is a member of or represents a law enforcement or emergency service organization.

Effect of the Bill

The bill amends Florida's "Solicitations of Contributions Act" to prohibit a person from falsely stating that he or she is a member of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, or National Guard in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion.

CS/HB 1455 creates s. 817.312, F.S., to prohibit a person from misrepresenting himself or herself as a member or veteran of the United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, United States Navy, or National Guard and wear the uniform of or any medal or insignia authorized for use by members or veterans of those entities while soliciting for charitable contributions. The bill provides that a person that commits the new crime is guilty of a third degree felony.⁴

¹ Sections 496.401-496.424, F.S.

² Section 496.402, F.S.

³ See s. 496.404(23), F.S., ("Sponsor sales promotion" means "an advertising or sales campaign conducted by a commercial co-venturer who represents that the purchase or use of goods or services offered by the commercial co-venturer will be used for a sponsor purpose or donated to a sponsor. The provision of advertising services to a sponsor does not, in itself, constitute a sponsor sales promotion").

⁴ A third degree felony is punishable by up to 5 years in prison and a fine up to \$5,000. See ss. 775.082, 775.083, F.S.

The bill provides an effective date of October 1, 2010.

B. SECTION DIRECTORY:

Section 1. Amends s. 496.415, F.S., relating to prohibited acts

Section 2. Creates s. 817.312, F.S., relating to unlawful use of uniforms, medals, or insignia.

Section 3. Provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On March 17, 2010, the Criminal Justice Impact Conference determined that an earlier version of this bill, which created a third degree felony relating to falsely claiming to be a member or veteran of the United States Armed Forces or organized militia for commercial purposes, would have an insignificant prison bed impact on the Department of Corrections. The Criminal Justice Impact Conference has not considered the committee substitute. However, since the committee substitute limits the scope of the original bill, it is anticipated that the committee substitute will have an insignificant prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Chapter 496, F.S., has generally been upheld against constitutional challenges.⁵ This bill has two provisions that might be subject to constitutional challenge. The bill makes it a crime to falsely represent one's self as representative of the United States Armed Forces in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion. The bill also makes it a crime to misrepresent one's self as a member of the United States Air Force, United States Army, United States Coast Guard, United States Navy, United States Marine Corps, or National Guard and wear the uniform or insignia authorized for use by members or veterans of those entities while soliciting for charitable contributions. It could be argued that these provisions violate the First Amendment prohibition on laws restricting the freedom of speech.

In State v. Montas,⁶ the court held that a statute that prohibited the wearing of military uniforms by non-military personnel was overbroad because it criminalized potentially innocent conduct. This bill could be subject to First Amendment challenges under Montas. This bill attempts to avoid the infirmity of Montas by stating that one cannot falsely claim to be a member of the specified military organizations and by limiting the restriction to when the person is soliciting charitable contributions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

The Public Safety & Domestic Security Committee considered the bill on March 22, 2010. The committee adopted an amendment that removed the term "United States Armed Forces" and replaced it with "United States Air Force, United States Army, United States Coast Guard, United States Marine Corps, and United States Navy" to provide a definition for the term. The amendment removed provisions of the bill creating a crime relating to falsely claiming to be a veteran or member of the United States Armed Forces for commercial purposes and created the crime relating to falsely claiming to be a veteran or member of the military while soliciting charitable contributions. The bill, as amended, was reported favorably as a committee substitute. This analysis reflects the committee substitute.

⁵ See Wickman v. Firestone, 500 So. 2d 740 (Fla. 4th DCA 1987).

⁶ 993 So. 2d 1127 (Fla. 5th DCA 2008).